of license. From the earliest days of broadcasting, the Commission has pursued policies aimed at encouraging localism.[57] These policies are based on statutory directives, including Section 307 of the Communications Act of 1934, as amended, which requires the Commission, in making licensing decisions, to distribute radio and television stations equitably among the states.[58] Thus, the Commission has licensed stations to serve local communities pursuant to Section 307(b), and it has obligated them to serve the needs and interests of their communities. Stations may fulfill this obligation by presenting local news and public affairs programming and by selecting programming based on the particular needs and interests of the station's community. While the Commission leaves to the discretion of its licensees the best means of fulfilling this obligation, there is no question that locally produced news, public affairs and other local programs are a preferred means of responding to local needs and interests.[59] For this reason, the Commission encourages the production of local programming through a number of its rules and policies.[60]

33. Telemundo has a strong tradition of meeting the needs and interests of its predominantly Spanish-speaking audience by producing and airing high-quality local news and other programs on its owned and operated stations. During the last five years,

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[57] *See Media Ownership Order,* ¶¶ 73-79.

[58] 47 U S C. § 307(b).

[59] *See Media Ownership Order,* ¶ 230 (amending local ownership waiver standard to include consideration of increased news and other local programming).

[60] For example, in recognition of the importance of local programming, the main studio rule requires licensees to maintain program origination and transmission capability in their main studio facilities. *See Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Radio and Television Stations*, 13 FCC Rcd 15691(1998), *recon* , 14 FCC Rcd 11113 (1999)

Telemundo has won 49 regional Emmy awards, including 29 awards for news and public affairs programming. Although, due to the costs of program production, the quantity of such news and other local programming varies with the size of the market and the profitability of the particular station, all full-power owned and operated Telemundo stations carry some locally produced news programs. During the last two years, for example, Telemundo has expanded its news programming on its owned and operated station in Los Angeles from five hours per week to 19.5 hours per week.

34. Under GE/NBC's ownership, Telemundo has placed even greater emphasis on local news by expanding budgets and resources available for production of local news programming. This emphasis produced dramatic ratings gains for Telemundo's local news programs even within the first year of NBC's stewardship of Telemundo, particularly where the network owns full power outlets. For example, ratings for the 11:00 p.m. local Telemundo newscast jumped by triple digits in New York, Los Angeles, and San Francisco.[61]

35. As noted above, Telemundo's programming is currently broadcast in Phoenix on a Class A station. Granting the proposed channel exchange will give KPHZ much-needed credibility with advertisers, who are disinclined to buy time on low power stations. This increased revenue flow will in turn support an expanded local programming effort in Phoenix, including increased local news directed to the Hispanic audience. To this end, Telemundo pledges that if it is permitted to operate KPHZ on non-reserved Channel 39, it will produce and broadcast a minimum of one hour of locally produced news each day Monday through Friday. In addition to bringing another

[61] Valerie Block, *NBC's Telemundo Comes Up in the World*, Crain's New York Business, Dec 13, 2002.

independently owned voice and viewpoint to the market, this commitment will put competitive pressure on other stations in the market – most notably Univision's Spanish-language station – to improve their local programming efforts.

36. The Commission's decisions frequently have cited the importance of locally produced news programming to the local viewing audience. For this reason, the Commission has granted waivers of its media ownership rules based on pledges relating to enhanced local news production. For example, the FCC based its grant of a permanent duopoly waiver allowing Capital Cities/ABC to own television stations in New York and Philadelphia in violation of its former Grade B overlap rule in part on the pledge by Capital Cities to remedy the historic service deficiencies in New Jersey and Delaware by, *inter alia*, opening new auxiliary studios and news bureaus in those states.[62] More recently, the Commission granted waivers of the one-to-a-market rule to Jacor Communications, Inc. in connection with its merger with Citicasters, Inc. based in part on a pledge by Jacor to air an additional one-half hour of news and information programming on its Tampa Bay television station and an additional half-hour of public affairs programming on its Cincinnati television station.[63]

37. Moreover, the provision of local news programming by Spanish-language broadcasters is a particularly important element of public service to Hispanics because their targeted audience is less likely to subscribe to cable or satellite. Phoenix – where only 24% of Spanish-language viewers subscribe to cable – is a prime example. Print

[62] *See Capital Cities Communications, Inc*, 59 RR2d 451 (1985).

[63] *See Shareholders of Citicasters, Inc (Transferor) and Jacor Communications, Inc (Transferee)*, 11 FCC Rcd 19135 (1996)

options (i.e., newspapers and magazines) in Spanish are also limited. As noted above, in 14 of the top 20 Hispanic markets, there is no daily Spanish-language newspaper. In the fourth-largest Hispanic market – Chicago – there is not a single daily newspaper published in Spanish. Thus, Spanish-language over-the-air news broadcasts serve as an exceptionally important source of news for these viewers.

D. The Proposal Will Further the Commission's Goal of Improving Commercial Broadcasting by Facilitating Technical Improvements

38. Improving commercial over-the-air television service through technical upgrades serves the public interest and is a goal the Commission seeks to foster. Thus, the FCC in the *Gary* case approved a channel exchange in which the commercial operator sought to exchange channels with an NCE permittee so that it could substantially improve its service to a major metropolitan area, recognizing that the NCE operator did not need wide-area coverage because it did not intend to compete for advertising.[64]

39. In the *Gary* case, the channel exchange was motivated primarily by the commercial operator's desire to broadcast from the Sears Tower in Chicago, which it could not do on its original channel because of a short-spacing problem. In return, the noncommercial operator would receive funding to construct its facility. Because the noncommercial operator intended to serve northwestern Indiana, rather than Chicago, and did not intend to compete in the commercial programming market, the Commission concluded that various transmitter sites (including its existing site) would be available to it that would provide adequate service. The FCC found the commercial operator's increased service to the public to be a public interest factor supporting the exchange.

[64] *See Gary*, *supra* note 51, at 13.

E. Most Importantly, the Proposal Will Further the Commission's Goal of Giving Phoenix's Spanish-Speaking Viewers a Choice of Free, Over-the-Air Television Stations Tailored to Their Needs and Interests, Thereby Fostering Content Diversity and Economic Competition

40. Improving the quantity, quality and competitiveness of television service delivered to Spanish-speaking viewers is, independently, an important public interest objective that finds ample support in the FCC's allotment and other precedents. In an allotment proceeding very similar to this Proposal, which preceded the adoption of the *Channel Exchange Order*, the FCC approved a proposal in which commercial Channel 60 was reserved and moved to San Mateo, California, and NCE Channel 14 was dereserved and moved to San Francisco.[65] The Commission's approval was based in part on the fact that the commercial station operating on the newly dereserved Channel 14 would be "able to provide improved coverage to an important part of the total Spanish language population in a 10-county area by virtue of the new equipment it can use on Channel 14."[66] Nowhere is real Spanish-language competition more needed than in Phoenix. The Commission in the *San Francisco/San Mateo* case also pointed to the importance of the financial assistance being provided by the commercial operator to the NCE operator, which would enable the NCE station to improve its equipment and facilities.[67] With the ongoing digital transition placing a particularly heavy burden on noncommercial operators, such financial assistance is more important than ever before.

[65] *See Amendment of Section 73 606(b), Table of Assignments, Television Broadcast Stations (San Francisco and San Mateo, California)*, 68 F C.C 2d 860 (1978).

[66] *Id* at 862.

[67] *Id* at 861 n 2.

Grant of the Proposal will result in the payment of substantial consideration to CTE, which will in turn facilitate the transition of CTE's station to digital transmission.

41. The Commission has recognized the importance of bringing programming to diverse ethnic groups and those speaking languages other than English in numerous other contexts as well. For example, in 1980, when the FCC re-examined its policy on time brokerage agreements, it based its decision to encourage time brokerage – which represented a departure from the FCC's earlier-expressed concerns about improper delegations of control – on the assumption that time brokerage could foster healthy program competition and enhance diversity of programming.[68] The Commission found in that proceeding that a change in policy was warranted in part because the programming needs of certain audiences continued to go unmet. The Commission noted that this was particularly the case for foreign language audiences[69] and therefore concluded that greater flexibility in time brokerage and time sharing arrangements could encourage more programming responsive to the needs of those specialized audiences. Notably, the Commission made these statements without reference to any specific market; certainly, the Commission's reasoning applies even more powerfully to the nation's ninth-largest Hispanic television market, where nearly one million Hispanics have free, over-the-air access to only a single full-power Spanish-language television station.

42. The Commission also has justified waivers of specific FCC rules largely or solely on the basis that such waivers would result in greater consumer access to

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[68] *See Petition for Issuance of Policy Statement or Notice of Inquiry on Part-Time Programming*, 82 F C C 2d 107, 108 (1980).

[69] *Id* at 120

foreign-language programming and, more specifically, Spanish-language programming. For example, in 1978, when the FCC commenced a proceeding to explore possible changes in the network representation rule, the Commission granted a temporary waiver of the rule to Univision to allow the network to represent its non-owned affiliates in the spot advertising market.[70] The Commission subsequently granted temporary waivers to Telemundo and to Latin International Network Corporation. In 1988, when the FCC adopted a Further Notice of Proposed Rulemaking in that proceeding, it observed:

> Early indications are that the presence of a second Hispanic television network has expanded the overall advertising market. . . . Hispanic television advertising revenues more than doubled between 1982 and 1986 (to $184 million) and the expectation of industry participants is that the presence of Telemundo will expand the overall advertising market even further. It seems that granting the waiver to Telemundo has encouraged new entry into "networking" and has enhanced rather than discouraged competition in the delivery of television service to the public.[71]

43. When the Commission made each of those waivers permanent in 1990, it again emphasized the important role the waivers had played in encouraging the development of foreign-language networks:

> Univision has grown from a few affiliates . . . to over a dozen UHF full-power television stations, and many low power and translator television stations. . . . Telemundo, first launched in 1987, is already an aggressive competitor in the delivery of Spanish-language programming. Both Univision and Telemundo attest to the fact that the waiver

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[70] *Network Representation of TV Stations in National Spot Sales*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, BC Docket No. 78-309, 43 Fed. Reg. 45895, 45898 (Oct. 4, 1978)

[71] *See Amendment of §73 658(i) of the Commission's Rules, Concerning Network Representation of TV Stations in National Spot Sales*, Further Notice of Proposed Rule Making, 3 FCC Rcd 2746, 2750 (1988) (citations omitted).

> has enabled them and their affiliates to grow as providers of foreign-language television programming to the public. Based on over a decade of experience in observing the consequences of our initial waiver to Univision and the overall record herein, it appears clear to us that had we not waived the network representation rule in 1978, the development of the above-referenced new foreign-language programming services would have been hampered, if not stifled completely, an outcome clearly inconsistent with the public interest. ***Moreover, the record evidence in this proceeding shows that the waivers of the network representation rule granted to both Univision and Telemundo continue to provide additional benefits in that they further several of the Commission's longstanding goals: encouraging the growth and development of new networks; fostering foreign-language programming; increasing programming diversity; strengthening competition among stations; and fostering a competitive UHF service.***[72]

For all of the reasons it gave when it granted the original waivers, the FCC has recently granted a similar waiver to Azteca America, which underscores that the Commission's long-stated goal of fostering access to foreign language programming remains as–or evenmore–compelling today.[73]

44. The Commission also has granted waivers of the spacing requirements for television stations based in part on the fact that the short-spaced proposals would improve service to Spanish-language viewers.[74] Even though the proponents of the short-spacing waivers in *KCRA* were unable to make the threshold showing that their existing transmitter sites were no longer suitable and that there were no other fully-spaced or less

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[72] *See Amendment of §73 658(i) of the Commission's Rules, Concerning Network Representation of TV Stations in National Spot Sales*, Report and Order, 5 FCC Rcd 7280, 7281-82 (1990) (emphasis added) (citations omitted).

[73] *See Azteca International Corporation (Azteca America)*, 18 FCC Rcd 10662 (2003).

[74] *See KRCA License Corp*, 15 FCC Rcd 1794 (1999) (*"KCRA"*).

short-spaces transmitter sites from which they could operates, the Commission found that these deficiencies were not dispositive because of "the unusual combination of the public interest factors presented here."[75] Further, the Commission ruled that the issue of coverage gains and losses – usually of primary importance – likewise was not dispositive: "The weighing process in which we engage to determine whether a projected loss of service will be outweighed by other factors involves more than a mere comparison of numbers. In this case, we find that the loss of service is of marginal significance because the loss area is well served by numerous other television stations and . . . there are substantial public interest benefits," including "substantial service gains to Spanish- and Asian-language viewers."[76]

45. The Commission has recognized the critical importance of serving the Spanish-speaking community in a number of its other rules as well. For example, the FCC's closed captioning rules recognize the unique status of the Spanish language in America. In 1997, the FCC adopted rules implementing Section 713 of the Communications Act of 1934, which was added to the Act by Section 305 of the Telecommunications Act of 1996. Section 713 generally requires that video programming be closed captioned. The Report and Order adopting the original rules granted an exemption from the closed captioning requirement for ***all*** non-English language programming.[77] On reconsideration, however, the Commission was persuaded that Spanish was unique (given the size and rapid rate of growth of the Spanish-speaking

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[75] *Id* at 1800.

[76] *Id* at 1802

[77] *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996,* Report and Order, 13 FCC Rcd 3272 (1997)

population) and therefore concluded that Spanish-language programming also should be closed-captioned, albeit on a more lenient phased-in schedule.[78]

46. The Commission reached a similar conclusion with respect to the availability of telecommunications relay services for the hearing-impaired. In the Report and Order adopted in 2000 in CC Docket No. 98-67, the Commission encouraged the provision of non-English language relay services by finding such services eligible for reimbursement out of the interstate relay funds. However, in the same order, the Commission singled out Spanish-language relay services for special treatment and ***mandated*** that interstate common carriers provide interstate Spanish relay service by March 1, 2001. As with the provision of closed-captioning in Spanish, the FCC found that Spanish was distinct from all other foreign languages because it is spoken by more residents of the U.S. than any other language and because the number of Spanish-speaking persons is significantly larger than any other non-English speaking population and is growing rapidly.[79]

47. As the foregoing summary of FCC precedents demonstrates, the Commission unquestionably views speakers of Spanish as a distinct segment of the population deserving of special protections, including full access to the wide range of communications and media services available throughout the United States. Of particular relevance to the Proposal, the precedents demonstrate that providing new and expanded

[78] *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996,* Order on Recon , 13 FCC 19973 (1998).

[79] *See TRS Report and Order,* 15 FCC Rcd at 5154-55, ¶¶ 28-30, *see also* 47 C.F.R. § 64 603 (2002), *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 03-112, ¶¶ 110-14 (June 17, 2003) (noting that Hispanics are the fastest growing minority in the deaf school-age population in the United States).

over-the-air television service to Spanish-speaking viewers has been a longstanding goal of the FCC. Indeed, the Commission has found repeatedly that the substantial public interest in achieving this goal justifies waiving certain of its rules and modifying long-standing policies. That goal has become even more important as Univision solidifies its dominant position in Spanish-language broadcasting and as Spanish-language television evolves from a niche to a news and information lifeline for millions of Americans. There is much evidence that the Spanish-language television market should be viewed as a distinct market for Commission purposes. That the only parties – other than Telemundo – who have been willing to enter this fast-growing market in any substantial way are Mexico's top two television services itself is an indication as to the uniqueness of (and entry barriers to) this market. (That the second entrant, Azteca, is in severe financial trouble underscores that this market presents unique and difficult barriers.)

48. The foregoing discussion demonstrates that regardless of whether the Commission chooses to view Spanish-language television as a separate market for purposes of its ownership rules, the need to provide some level of access to competitive over-the-air, full-power foreign language television services has sufficed under the Commission's precedent for multiple waivers of the Commission's Rules and modifications of its policies. The Hispanic residents of Phoenix need and deserve that access.

49. Even apart from the foreign-language context, the Commission frequently has accepted programming-related commitments from licensees seeking approval for waivers or other actions. The examples cited above specifically with respect to enhanced news programming demonstrate the FCC's willingness to accept such commitments

when it finds that the public interest would be served thereby. Other examples of the FCC's reliance on such programming-related commitments abound in the agency's precedents. For example, the Commission has repeatedly found programming commitments to be a public interest benefit weighing in favor of a grant of a permanent duopoly waiver.[80]

50. In this case, Telemundo commits to producing and broadcasting a full hour each weekday of local news in Spanish on KPHZ operating on Channel 39 in Phoenix. Because free, over-the-air television is ***the*** primary source of news and information for Spanish-speakers in Phoenix -- where cable penetration is only 24% among Spanish-speakers and there is no daily Spanish-language newspaper, this commitment will substantially increase both access and choice for Hispanic viewers.

51. NBC and its parent, GE, have made a substantial and long-term commitment to broadcasting directed to the Hispanic audience. In addition to spending $2.7 billion to acquire the Telemundo network and the Telemundo owned and operated stations, GE and NBC subsequently have invested more than $145 million in acquiring

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[80] *See, e g , WNWO Associates (Assignor) and Malrite Communications Group, Inc (Assignee)*, 11 FCC Rcd 18595 (1996) (granting permanent duopoly waiver based in part on pledge to increase news and children's programming); *WHTM-TV, Inc (Assignor) and Harrisburg Television, Inc (Assignee)*, 11 FCC Rcd 5829 (1996), (permanent duopoly waiver based in part on pledge to establish Washington, D C., news bureau and increase local news and other local programming), *Stockholders of CBS Inc and Westinghouse Electric Corp* , 11 FCC Rcd 3733 (1995) (granting permanent duopoly waiver based in part on pledge, *inter alia*, to increase by nearly one-third the amount of locally originated news programming, to establish a news bureau in New Jersey's capital, and to augment the amount of children's programming); *Taft Broadcasting Partners Limited Partnership (Transferor) and Tribune Broadcasting Company (Transferee)*, 7 FCC Rcd 2939 (1992) (permanent duopoly waiver granted on the basis of pledge to expand children's, public affairs, sports and other local programming), *Station Partners (Assignor) and National Broadcasting Company, Inc (Assignee)*, 1995 FCC LEXIS 4962 (1995) (granting permanent duopoly waiver based on NBC's pledge to almost double the amount of locally originated news programming, to increase the amount of news programming of particular interest to New Jersey residents, and to staff and operate a New Jersey news bureau); *H&C Communications, Inc (Assignor) and KCCI Television, Inc (Assignee)*, 9 FCC Rcd 144 (1993) (basing grant of permanent duopoly waiver in part on pledge to increase local news programming, to enhance children's programming, and to expand weather coverage using state-of-the-art equipment).

additional full-power and Class A stations to improve Telemundo's distribution, including in markets that are smaller and less strategically important for an Hispanic national network than Phoenix, which is the ninth-largest Hispanic DMA. Further, if the channel exchange proposed herein is approved, NBC and Telemundo commit to operate KPHZ on Channel 39, Phoenix, as an affiliate of the Telemundo network.

52. Financial Support for NCE Operator. Finally, as noted above, the Commission has recognized as an important public interest factor in channel exchange and dereservation cases the provision of financial assistance to NCE operators. For example, in the *San Francisco/San Mateo* case, the FCC noted that the commercial operator's payment of consideration to the NCE licensee would enable the latter to upgrade its transmission facilities.[81] Likewise, in the present case, the money to be paid to CTE by Telemundo will enable CTE to convert its station to digital transmission and to make other technical improvements, as well as supporting CTE's program development.

53. Any potential detriment caused by the withdrawal of commercial over-the-air service in Holbrook is outweighed by the benefit of reserving Channel 11 in that community, which will bring NCE service (and improved programming) to an NCE white area. The station has the potential to serve as a local outlet for expression, but it is likely to do so only as a noncommercial station.

54. Dereservation of Channel 39 will not create an NCE white area (or any other white area) in Phoenix. Phoenix has another reserved channel – Channel *8 –

[81] *See also Rainbow Broadcasting Co v FCC,* 949 F.2d 405 (1991) (noting that cash infusions to noncommercial operators are one way of promoting the public interest in a channel exchange).

allotted to it, which is the PBS affiliate in the DMA. In addition, Station KPAZ-TV, part of the Trinity Broadcasting network, is operated noncommercially on nonreserved Channel 21. KPAZ-TV offers programming similar to that broadcast on KDTP and has a superior signal and coverage.[82] Although KDTP broadcasts occasional local church services, it does not air local news or any other locally produced programming. Like KPHZ, KDTP has been on the air a short time (less than three years), after the channel had lain fallow for more than 30 years.

55. In addition to paying CTE cash consideration and assigning Channel 11 in Holbrook to CTE as part of this transaction, Telemundo also intends to assign the license for Station KDRX-CA to CTE, which will allow CTE to provide over-the-air service to Phoenix.[83] As a Class A station, KDRX is entitled to certain protections that give it primary status vis-à-vis other television stations, including full-power stations.[84]

56. Moreover, CTE has confirmed its willingness to accept a condition that limits its operation on KDRX to noncommercial educational operation. Although the Commission declined to reserve Class A stations for exclusive NCE use when it established the new service, this is not an impediment to accepting CTE's pledge to operate the station noncommercially. Licensees are permitted to operate noncommercially on commercial channels, and CTE's pledge is comparable to the types

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[82] As noted above, Trinity is the number one religious network in the U.S., followed by Daystar in the number two slot Thus, both of these major religious networks are represented in the Phoenix market.

[83] Although not required to carry KDRX-CA, cable operators currently carrying CTE's programming are not likely to drop this programming when it is shifted to KDRX.

[84] *Establishment of a Class A Television Service*, 15 FCC Rcd 6355, 6381-87 (2000)

of programming commitments relied upon by the Commission in other cases, including the duopoly waiver cases cited above.

IV. CONCLUSION

57. In 1952, when the FCC established the Television Table of Allotments and first set aside channels for noncommercial use, it stated that "the whole of the Table of Assignments including the reservations of channels for use by non-commercial educational stations is subject to alteration in appropriate rule making proceedings in the future, and ***any assignment, whether an educational reservation or not, may be modified if it appears in the public interest to do so.***"[85] It is difficult to imagine a more unique and compelling set of circumstances justifying a modification of the Table as proposed herein to better serve the public interest. Denial of the Proposal will almost certainly result in a net loss in television service and the creation of a white area in Holbrook. Equally important, denial of the Proposal will perpetuate Univision's dominance of the Hispanic broadcasting market in Phoenix and will deprive viewers in that market – and the advertisers who seek to reach them – of both content diversity and economic competition. In contrast, if the Proposal is granted, the Phoenix DMA will continue to have two noncommercial allotments and Phoenix itself will continue to be served by two noncommercial stations ***and*** a new noncommercial Class A station. Further, adoption of the Proposal will ensure each of the following benefits, any one of which has been determined sufficient under recent precedent to justify a modification of a reserved allotment:

[85] *TV Allotment Order*, ¶ 42 (emphasis added).

58. As in the *Gary* case, the channel exchange proposed here will allow the commercial operator to significantly improve its ability to serve Phoenix – and, most importantly, the substantial and underserved Hispanic segment of the Phoenix population – while the NCE operator will benefit from a substantial cash infusion and will continue to reach its desired audience with the combined service areas of Channel 11 in Holbrook and KDRX-CA. Grant of the Proposal will preserve two full-power television stations, while denial of the proposal likely will result in the discontinuance of operation by KPHZ and the creation of a white area, thus depriving the residents of Holbrook of a free, over-the-air television service. The proposal also will eliminate an NCE white area in Holbrook, thereby furthering one of the FCC's allotment priorities. The withdrawal of KPHZ as a commercial outlet in Holbrook does not offset these benefits, particularly because KPHZ has been on the air as a commercial facility for such a short period of time, has not, during that time, broadcast any local programming or local advertising, and has proven to be not economically viable as a commercial outlet. Moreover, as in the *Boca Raton/Lake Worth* proposal, neither community will be deprived of its only local transmission service.[86] Indeed, the proposal will preserve the status quo in terms of the number of reserved and nonreserved stations in the DMA and the total number of stations allotted to each community of license, which distinguishes this case from *WQED*. Finally, and most importantly, grant of the Proposal also will result in expanded and improved local news and other local programming on Channel 39 and will create the first

[86] The proposal in the *Boca Raton/Lake Worth* case ultimately was not adopted because one of the parties stated in its reply comments that it did not wish to pursue the channel exchange. This outcome does not affect the Commission's preliminary findings for purposes of the Notice of Proposed Rule Making in that case that the proposal would have served the public interest.

full-power competitor to Univision in the Phoenix market, which will give Spanish-speaking viewers a meaningful choice and will enhance diversity of programming in the ninth-largest Hispanic DMA.

59. All of these factors weigh heavily in favor of granting the Proposal. Moreover, the same public interest considerations that warrant dereservation of Channel *39 and reservation of Channel 11 also warrant a waiver of the uncodified policy requiring new commercial allotments to be made available for competing applications. As noted above, the Commission concluded in adopting Section 1.420(h) that a requirement to open the modified allotments to competing applications would defeat the benefits of proposed channel exchanges by discouraging parties from requesting such exchanges. Accordingly, channel exchanges approved under that rule section are not subject to competing applications. The same public interest considerations that led the Commission to this conclusion in adopting Section 1.420(h) apply fully to the Proposal.

60. These numerous public interest benefits could not be realized ***but for*** the dereservation of Channel *39 and the reservation of Channel 11. It is for precisely such reasons that the Commission ruled in the *Channel Exchange Order* that allotments modified pursuant to Section 1.420(h) would not be opened to competing applications. The Petitioners believe that application of Section 1.420(h) is amply justified in this case. Even if the Commission concludes, however, that the Proposal is not governed by Section 1.420(h), the unique circumstances of this case warrant equivalent treatment. Commission precedent demonstrates that when the benefits of a proposal could not be obtained ***but for*** the dereservation, the Commission will waive its uncodified policy

requiring new commercial allotments to be opened to competing applications. The Commission should do so in this case as well.[87]

61. Accordingly, the joint petitioners request the Commission to amend the television Table of Allotments as set forth below and to either (1) modify the licenses of Telemundo and CTE accordingly or (2) direct the parties to file reciprocal assignment applications.

[87] *WQED, supra* note 29, at 8; *Buffalo, supra* note 29.

Current:

Community	Channel No.[88]
Holbrook	11+, *18+
* * * *	
Phoenix	3+, 5-, *8+, 10-, 15-, 21, 33, *39, 45, 61

Proposed:

Community	Channel No.
Holbrook	*11+, *18+
* * * *	
Phoenix	3+, 5-, *8+, 10-, 15-, 21, 33, 39, 45, 61

[88] As discussed above, and pursuant to the *Sixth Report and Order*, the allotment of Channel *18+ in Holbrook cannot be applied for and will be deleted at the end of the digital transition.

Respectfully submitted,

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August 7, 2003

dc-354005

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August 7, 2003